

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13292
Docket No. 13136
98-2-96-2-36

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(System Council No. 14
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

- “1. That under the current Agreement, Mechanical Department Electrician J.L. Ashley, Claimant, was unjustly treated when he was suspended from service on January 11, 1995 for allegedly violating terms of a Conditional Reinstatement and was dismissed from the service of the Carrier on January 31, 1995 for his alleged violation of Rule 1.5 of the Safety and General Rules for All Employees.

2. That accordingly, Southern Pacific Lines (Western Lines) be ordered to restore Electrician J.L. Ashley to service with no conditions placed on Employment status, with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and the loss of wages to include interest at the rate of six percent (6%) per annum, commencing from January 11, 1995 to September 10, 1995.

NOTE: Claimant J.L. Ashley passed away on September 10, 1995 during the handling of this dispute.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On July 22, 1993 Claimant was found asleep and under the influence of alcohol or drugs. Claimant was dismissed. On January 11, 1994 Claimant was reinstated after signing a Conditional Reinstatement Agreement which reads in part:

- “(1) You must totally abstain from alcohol and other drugs.
- (2) You must participate in a rehabilitation program as agreed to with the Manager of Employee Assistance Services.
- (3) You will submit to unannounced follow-up alcohol and/or drug tests for at least two years.
- (4) You will be required to pass the required return to duty physical and rules examination prior to returning to service.
- (5) You will be required to protect your job assignment and any failure to protect your employment will require explanation and verification.

If you violate any of the above conditions, you will be suspended from service immediately pending formal investigation.”

On January 5, 1995 at the end of the shift, the Claimant was required to take a drug test. On January 11, 1995 Claimant was removed from service pending an Investigation. On January 24, 1995 the Investigation was held and the Claimant was dismissed on January 31, 1995.

The Organization claims the Claimant was unjustly treated and was not given a fair and impartial Hearing.

The record of the Hearing shows the Claimant was given a fair and impartial Hearing. The evidence shows the Claimant's drug test showed a positive reading for the use of alcohol. The test read .13. This indicates the Claimant either came to work after having consumed a substantial amount of alcohol, or was drinking on the job.

It was the Claimant's second offense for the improper use of alcohol. This Board will not disturb the action of the Carrier.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of June 1998.